

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 11593 of 2004(E)

PETITIONER:

1. M.J.THOMAS, MADAVANA HOUSE,
NEAR RAILWAY STATION, R.S.P.O., THIRUVALLA 689 111
2. THOMAS CHERIYAN S/O. LATE K.T.CHERIAN,
AGED 58, KOVOOR KAKKUZHIYIL, KAVUMBHAGAM MURI,
KAVUMBHAGAM VILLAGE, THIRUVALLA-689 102

BY ADV. SRI.SAIGI JACOB PALATTY
SRI.BECHU KURIAN THOMAS
SRI.PRAKASH PUTHIADAM
SRI.PAUL JACOB (P)
SRI.ROSHEN.D.ALEXANDER
SRI.NAVEEN CHERIAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIATE, THIRUVANANTHAPURAM
2. GOSPAL FOR ASIA, MANJADI,
KUTTAMPPUZHA VILLAGE, THIRUVALLA TALUK AND
REPRESENTED BY ITS PRESIDENT K.YOHANNAN,
KADAPPILARIL HOUSE, MANNATHODU WEST,
NIRANAM VILLAGE, THIRUVALLA TALUK.
3. K.P.YOHANNAN, KADAPPILARI HOUSE,
MANNATHODU WEST MURI, NIRANAM VILLAGE,
THIRUVALLA.

R1 BY SHRI R. LAKSHMINARAYANAN, SR. GOVERNMENT PLEADER
R2 BY ADV. SRI.CHERIAN GEE VARGHESE
SRI.S.VENKATASUBRAMONIA IYER(SR.)
SRI.RAJAN JOSEPH, ADDL.A.G.
SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 8/10/2007, THE COURT ON 25/10/2007, DELIVERED THE
FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE PLAINT OS NO.226/2003 ON THE FILE OF MUNSIF COURT, THIRUVALLA (PATHANAMTHITTA DISTRICT COURT VACATION COURT)

EXT.P2-TRUE COPY OF THE CAVEAT PETITION DATED 21.5.2003 RECEIVED BY THE PETITIONERS.

EXT.P3-TRUE COPY OF THE PETITION BEFORE THE TAHSILDAR, THIRUVALLA EXERCISING JURISDICTION OF THE ACCOMMODATION CONTROLLER.

EXT.P4-TRUE COPY OF THE ADVOCATE NOTICE DATED 23.1.2004

EXT.P5-TRUE COPY OF THE ADVOCATE NOTICE DATED 23.2.2004

EXT.P6-TRUE COPY OF THE NOTIFICATION DATED 23.8.2003

EXT.P7-TRUE COPY OF REPLY NOTICE DATED 23.2.2004

EXT.P8-TRUE COPY OF REPLY NOTICE DATED 23.2.2004

RESPONDENTS' EXTS:

EXT.R3(A)-TRUE COPY OF THE DEED DATED 1.10.1991

EXT.R3(B)-TRUE COPY OF THE DEED DATED 25.9.1997

EXT.R3(C)-TRUE COPY OF THE DEED DATED 22.6.2001

EXT.R3(D)-TRUE COPY OF THE REPRESENTATION FILED BEFORE THE MINISTER FOR LAW AND HOUSING IN JUNE 2003

EXT.R3(E)-TRUE COPY OF THE STATEMENT SHOWING THE CHARITABLE WORK DONE BY GOSPEL ASIA DURING THE YEARS ENDED 31.3.2000 TO 31.3.2001

// TRUE COPY //

P.S. TO JUDGE

**K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.**

W.P.(C).NO.11593 of 2004-E

Dated this the 24th day of October, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

The petitioners have filed this writ petition challenging Ext.P6 notification issued by the Government under Section 25 of the Kerala Buildings (Lease & Rent Control) Act, 1965 (for short 'the Act'). As per the said notification, the buildings of Gospel for Asia (the second respondent herein) have been exempted from various provisions of the Act.

2. The petitioners are the tenants of the second respondent. Both the petitioners are occupying different rooms, viz. X/271, X/269 and X/277 of Thiruvalla Municipality. They were inducted as tenants by Mr. Joseph Eapen, who sold it to one Mr. Mathai Syriac. The second respondent purchased the building from the said Mr. Mathai Syriac. The second petitioner as plaintiff, had instituted O.S. No.226/2003 before the Munsiff's Court, Thiruvalla against any eviction by using force by the second respondent. He had also filed a petition under Section 13(4) of the Act to the Accommodation Controller alleging deprivation of amenities by the second respondent. Subsequently, the petitioners were served with Exts.P4

and P5 notices by the landlord seeking vacant possession of the rooms. From the above notices, they came to know of the exemption granted to their buildings as per Ext.P6 and therefore the writ petition is filed challenging the same.

3. Ext.P6 is challenged on various grounds. It is averred in the writ petition that Ext.P6 has been issued without any application of mind, the affairs of the second respondent is fully controlled by the third respondent and his relatives and the second respondent is not a church and no public interest is involved in the matter. The contention therefore is that the exemption granted is in favour of an individual. It is further pointed out that there is clear hostile discrimination between the petitioners and other tenants and Ext.P6, if allowed to stand, will deprive them the protection allowed under the various provisions of the Act.

4. The Government as well as respondents 2 and 3 have filed counter affidavits supporting the legality of the notification. The relevant files have also been made available by the learned Govt. Pleader for our perusal.

For convenience, the notification Ext.P6 is extracted below:

“S.R.O. No.822/2003 -- In exercise of the powers conferred by sub-section (1) of section 25 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala hereby exempt in public interest the Buildings of Gospel for Asia from the provisions of sections 4,7, 11 and 13 of the said Act.”

The explanatory note shows that Government have decided in public

interest, to exempt the buildings of Gospel for Asia from the provisions of Sections 4, 7, 11 and 13 of the Act.

5. The petitioners have filed a reply affidavit and an additional reply affidavit to dispute the averments in the counter affidavits filed by the respondents herein.

6. The notification is one issued under Section 25 of the Act. Section 25 confers the power to grant exemptions. Section 25(1) provides that:-

“Notwithstanding anything contained in this Act, the Government may, in public interest, or for any other sufficient cause, by notification in the Gazette, exempt any building or class of buildings from all or any of the provisions of the Act.”

7. We heard learned counsel for the petitioners, Shri Bechu Kurian Thomas, learned Senior Advocate Shri S.V. Balakrishna Iyer, for respondents 2 and 3 and the learned Govt. Pleader Shri Lakshminarayanan. Learned counsel for the petitioners contended that the grant of exemption to the second respondent is a clear abuse of the power conferred under Section 25(1) of the Act, on the Government. It is further pointed out that even though the second respondent claims to be a public religious trust, actually the same is founded by the third respondent and his family members and the formation of the trust is merely a camouflage and there is absolutely no public interest in the matter. Elaborating the arguments, the learned counsel points out, after referring to the various provisions of the trust deeds, viz. Exts.R3(a), R3(b) and R3(c) that they will show that it is a clear case of

certain family members forming a trust and acquiring properties and utilising it for their private interest. It is further pointed out that even though the third respondent claims to be ordained as a Bishop of the Order, it is an act by himself. It is not at all a church. It is further pointed out that the amounts released by them towards charity are meagre compared to the total income and the profit they are gaining from the properties. Relying upon one document produced, viz. Ext.P9, learned counsel points out that when the total income is reckoned, the percentage of charity work done by the second respondent is a meagre 0.20 per cent for the year 2002. It is also submitted that the action by the State is totally unreasonable and is without considering the relevant materials. The learned counsel relied upon the decision of the Apex Court in **P.J. Irani v. State of Madras** (AIR 1961 SC 1731) and that of this court in **Moidunni Haji v.State of Kerala** (1991 (2) KLT 96), to contend for the position that the notification is clearly discriminatory, as what is attempted is to exempt the building owned by one particular individual, viz. the third respondent herein. Learned counsel further argued that the Government have issued the notification after ignoring relevant materials which had a bearing on the question and the issuance of the notification is based on totally irrelevant materials and thus, the grant of exemption attracts the vice of 'Wednesbury Unreasonableness.' In support of the above proposition, learned counsel relied upon the

principles stated by the Apex Court in **Supreme Court Employees Welfare Association v. Union of India and another** ((1989) 4 SCC 187, **State of NCT of Delhi and another v. Sanjeev alias Bittoo** ((2005) 5 SCC 181) and **Rameshwar Prasad and others v. Union of India and another** ((2006) 2 SCC 1.

8. Learned Govt. Pleader pointed out, by referring to the elaborate counter affidavit filed by them, that there is no misuse of the power conferred under Section 25 of the Act. In fact, by separate notifications, Government had exempted the buildings of all churches/Mosques of all minority religions from the various provisions of the Act as early as in the year 1992 vide G.O.(MS) No.14/92/HSG dated 7.3.1992 which was later amended through another G.O. Dated 30.10.1996. Exemptions have been extended to buildings of all Dioceses, Arch dioceses, Monasteries, Convents, Wakfs and Madrassas also. It is pointed out that these notifications have been upheld by this court and the Apex Court. It is further pointed out in the counter affidavit that the second respondent had submitted a representation before the Honourable Minister for Law and Housing, seeking to extend similar exemption for the buildings owned by the Gospel for Asia. In the representation, they had pointed out that Gospel for Asia is an Evangelical organisation propagating Christian faith and message in and around Asia and it is a religious organisation. The same is

a public religious trust and all buildings and properties are utilised for the sole purpose of propagating Christian faith. The organisation is providing several types of help to poor and needy and is carrying out various religious and charitable activities which are helpful for the general public at large.

9. It is further averred in the counter affidavit that the Government have called for a report from the District Collector after receipt of the said representation, who in turn, had obtained a detailed report from the Tahsildar. The report revealed that Gospel for Asia is an Evangelical organisation propagating Christian faith and messages as well as carrying out other social and charitable activities. The other claims raised by the second respondent have also been verified by the Tahsildar. Based on the report of the Tahsildar, the District Collector had submitted a detailed report to the Government through the Commissioner of Land Revenue. After elaborate consideration of the report received from the District Collector and after considering all factual aspects of the matter, the Government decided to extend the benefit of the existing notification, to the case of the buildings belonging to Gospel for Asia. The allegation that there was no public interest in granting the exemption, was also denied by the Government.

10. Learned Senior Counsel who argued for respondents 2 and 3,

placed reliance upon various facts pleaded in their counter affidavit. It is pointed out that the third respondent who is a Bishop, is the president of the second respondent. The counter affidavit narrates the circumstances under which the public religious trust was established with the main object, viz. religious and charitable purposes. It is pointed out in the counter affidavit that the affairs of the second respondent is governed by the provisions contained in the registered trust deed dated 22.6.2001, the executants of which are the third respondent and seven others. Tracing the history, it is further pointed out that initially a public religious trust under the name of Gospel Ministries, Kadapra was established as per a deed which was registered on 4.10.1991 (Ext.R3(a)). The name of the trust was first changed from Gospel Ministries, Kadapra to Gospel Ministries India and later to Gospel for Asia. Its office was shifted from Kadapra to Ernakulam and then from Ernakulam to Manjadi, Thiruvalla. After the trust was formed, the three trustees had inducted four more persons as trustees with effect from 25.9.1997 by a deed registered on that date. Ext.R3(b) is the said deed and Ext.R3(c) is the third deed dated 22.6.2001. A reference to the counter affidavit brings forth the contention that Gospel for Asia is presently part and parcel of Believers Church in India which was founded in the year 1991. It is further submitted in the counter affidavit that properties were being acquired for Gospel for Asia for its gospel work including

gospel ministry as well as other connected offices, charitable institutions and activities. It is fundamentally a religious organisation established for the purpose of propagating Christian faith as well as other social and charitable activities. The building in dispute was purchased as in the case of others, for the sole purpose of developing the Gospel for Asia as well as administering the same and for the purpose of providing free service and other allied services to the believers. It is pointed out that other charitable as well as humanitarian works are being undertaken by the Gospel for Asia. The sum and substance of the contentions raised is that it is a public religious trust catering to the needs of believers as well as general public at large. Reference is made to the representation Ext.R3(d) filed by them before the Government seeking exemption to their buildings. A reading of Ext.R3(d) shows that they have in detail, explained their activities and the hardship which may occur to them if exemption is not granted. Learned Senior counsel for respondents 2 and 3 further pointed out that various similar notifications issued by the Government, have been upheld by this court in the decisions reported in **State of Kerala v. Vijayan** (1978 KLT 342 (DB), **Jayakaran v. Kerala Health R & W Society** (1994 (1) KLT 27), a decision of a learned single judge which was approved by the Apex Court in **Christ the King Cathedral v. John Ancheril** (2001) 2 KLT 946). The learned counsel further relied upon the decision of the Apex Court in

AIR 1961 SC 1731 to contend for the position that the notification does not offend Article 14 of the Constitution of India and that relevant materials have been considered by the Government while issuing the notification. Reliance is also placed on the decisions of the Apex Court in **S. Kandaswamy Chettiar v. State of Tamil Nadu** (AIR 1985 SC 257) and that of a Full Bench of this court in **Lakshmanan v. Muhammed** (1992 (1) KLT 85), wherein similar notifications have been upheld. Relying upon the decisions in **Parippath Chandrasekhara Rao & Sons v. Alapathi Jalaiah** ((1995) 3 SCC 709) and **Havanji Hamsaraj v. Lurdes Church & others** (AIR 1999 Kerala 425), it is argued that the contention raised by the tenants that the protection under the Act creates a vested right in them, is also not correct.

11. The files produced by the Government Pleader shows that the Government after receipt of the representation, called for a report from the District Collector, Pathanamthitta, through the Commissioner, Land Revenue, Trivandrum. By letter dated 19.7.2003, the District Collector forwarded the report to the Commissioner, Land Revenue. It was specifically pointed out that the Tahsildar had reported that the Gospel for Asia is an Evangelical organisation for propagating Christian faith and message as well as other social and charitable activities. It is a public religious trust. Several charitable as well as humanitarian works are also

undertaken by the Gospel for Asia since 1997. The work of the institution is intended for spiritual and social uplifting of all flocks of the Society. The Tahsildar also reported that Gospel for Asia provides support to those people who suffered from natural calamities, for conducting marriage for poor girls and destitutes and they undertake several relief work as well as social activities all over India. It is seen from the files that a personal hearing was also conducted. The files show that the application of the second respondent is supported by various trust deeds also.

12. The important aspects which emerge from the factual matrix pointed out in the pleadings are that the third respondent who is a Bishop, is the president of the second respondent. The Government has already exempted the buildings belonging to churches, mosques, etc. from the provisions of the Act. The Government considered the second respondent as a public religious trust engaged in religious and charitable activities and therefore by issuing the notification, the Government appear to have acted in public interest.

13. The above claim of the Government is stoutly opposed by the learned counsel for the petitioners. The first question to be examined, in the light of the contentions raised by the petitioners, is whether the second respondent is a public religious trust or is only a private trust controlled by the third respondent. Ext.R3(a) is the deed of trust executed on 1.10.1991.

There were three trustees. The objects show that it was formed to work for the spiritual and social growth of the believers of the Christian faith, to establish and run bible schools; to acquire properties; to put up church buildings; parsonages, and to contribute by way of donations or advances any money required for the charitable and religious activities of the native evangelists and their churches. One of the objects is to run destitute homes, to offer help for marriage to the needy and to help the indigent widows wherever necessary. It is expressly stated in clause 2 that this is a religious and charitable trust. As per clause 6, the trustees may if they deem fit, apply the trust property or the income accruing therefrom for such purposes if any, as the trustees may find expedient to carry out the objects of the trust and the profits derived from such application shall again be applied wholly for any or all the objects and purposes of the trust in such manner as the trustees may decide. Clause 11 expressly prohibits the trustees from holding any interest in any property belonging to the trust otherwise than as a trustee. Clause 15 allows the trustees to collect donations and contributions for the trust and may use the same for pursuing any one or more of the objects of the trust in preference to other object/objects or in any permutation that they may prefer. Later deeds, viz. Exts.R3(a) and R3(c) are in continuation of the same. Therein also, provisions are made for applying the trust property or income accruing therefrom, for its objects.

14. The question is whether the same is a public trust or a private trust. Learned counsel for the petitioners argued that it is purely a private trust controlled by the third respondent. In support of the argument, it is pointed out that clauses 4, 6, 13, 15, and 22 of Ext.R3(b) give absolute power to the third respondent even to exercise overriding powers in regard to any decision taken by the board of trustees or in any clause of the trust deed. These clauses have been referred to in the arguments to show that the third respondent controls the entire thing. The next aspect that was pointed out is that the charitable work allegedly carried out, if assessed, will show that the amounts spent are meagre. It is pointed out that for the years 2000, 2001 and 2002 the figures are the following:

“2000 - Rs.34,50,018/-

2001 - Rs.30,52,210/-

2002 - Rs.23,87,602/-”.

It is further contended that going by the income, viz. Rs. 85 crores, 98 crores and 130 crores respectively for the three years, the same is negligible.

15. The distinction between private and public trust is well known. In **Deoki Nandan v. Muralidhar and others** (AIR 1957 SC 133), the distinction between such trusts was emphatically laid down. It was held that “the distinction between a private and a public trust is that whereas in the former, the beneficiaries are specific individuals, in the latter, they are the

general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.” Therefore, the question to be considered is whether the trust is or is not for the benefit of specified individuals or the general public or sections thereof. If the trust is not for the benefit of the members of the family of the settlors nor for an ascertained group of individuals, then it is a public trust. It is well known that public trusts are generally religious and charitable which are acting for the benefit of the public in general. Going by the above test, it is clear from Exts.R3(a) to R3(c) that the beneficiaries of the trust are not individuals. They are not members of a family also. The beneficiaries are believers in Christian faith. Merely because Ext.R3(a) was brought into force in the form of a trust by three family members, it cannot be said that the same is a private family trust, as contended by learned counsel for the petitioners. The beneficiaries are not ascertained individuals but are unascertained members of Christian faith as well as members belonging to public. The second respondent Gospel for Asia is part and parcel of “Believers Church”. The third respondent is the Bishop of the church. Therefore, it is clearly a religious organisation which is propagating Christian faith. If that be so, the second respondent is clearly a public religious trust and fully satisfies the tests laid down by the Apex Court in **Deoki Nandan v. Muralidhar**

and others (AIR 1957 SC 133) mentioned earlier. In Ext.R3(a) it is clearly spelled out that the object of the trust is to work for the spiritual and social growth of the believers of Christian faith, to establish and run bible schools and to contribute by way of donations or advances any money required for the charitable and religious activities of the Evangelists and their churches. It is also important to notice that one of the objects is to run destitute homes, to offer marriage help to the needy and to help the indigent widows, wherever necessary. All these are not for individual beneficiaries and the beneficiaries of the trust belong to Christian faith and other members of the public, an unascertained class as such. In the light of the above, it is incapable to ascertain the beneficiaries, as they are not specific individuals.

16. Therefore, there is no merit in the contention of the petitioner that it is purely a private family trust and the properties vest in the third respondent herein, absolutely. That the trustees can act only for the objects of the trust and utilise funds and properties and donations only for the purpose of trust, is clear from the trust deeds. They cannot also utilise the funds or properties or income for their own benefit, which is prohibited by the several clauses of the trust deed as noticed already. These are, according to us, significant aspects which are relevant while considering the question whether it is a public religious trust or not. We are satisfied that the trust constituted is a public religious trust.

17. Therefore, the question regarding validity of Ext.P6 has to be examined in the light of the well settled principles stated by the Apex Court and that of this court in various decisions. Both sides have relied upon the principles stated by the Apex Court in **P.J. Irani v. State of Madras** (AIR 1961 SC 1731). Learned counsel for the petitioner relied upon the said decision to contend for the position that the notification should be regarded as discriminatory as far as it exempts the buildings owned by one particular individual, viz. the third respondent. We have already found that the said contention is not correct and the second respondent is a public religious trust. While considering a similar argument, the Apex Court in paragraph 16 of the above judgment, held as follows:

“Before considering this argument it is necessary to advert to a submission of the learned counsel for the appellant suggesting that the High Court were in error in calling for the reasons which induced the Government to pass the orders of exemption, though when the reasons were before the Court it was in a position to examine the legality of the order. We do not consider this submission well-founded. The entire basis for upholding the constitutional validity of S.13 of the Act and considering that it did not offend the equal protection of the law guaranteed by Art. 14 of the Constitution was, that the discretion or the power conferred upon Government was not unguided, uncanalised or arbitrary but that it had to be exercised in accordance with the policy and object of the enactment gatherable from the preamble as well as its operative provisions. The order itself might on its face have shown that it conformed to this requirement, in which event it would have been for the party challenging the validity of the order to establish to the satisfaction of the Court that it was mala fide or had been passed on grounds not contemplated by or extraneous to the object and purpose of the enactment or the principles which should have governed the exercise of the power. For instance, if the exemption

had been in favour of a particular class of buildings, say those belonging to charities—religious or secular—the classification would have been apparent in the very order of exemption. Where, however, the exemption granted is not of any class of buildings which would ex facie disclose a classification, but the exemption is of a specified building owned by A or in which it is a tenant, then prima facie it would be discriminatory and when the legality of the order is challenged, its intra vires character could be sustained only by disclosing the reasons which led to the passing of the order.”

Going by the above dictum and in view of our conclusion that the second respondent is a public religious trust, it is clear that the notification does not suffer from any vice of arbitrariness under Article 14 of the Constitution of India. In the subsequent decision of the Apex Court in AIR 1985 SC 257, the question considered was whether the total exemption granted to the buildings of Hindu, Christian and Muslim religious and public charitable trust is violative of Article 14 of the Constitution of India or not. While referring to the question whether there were proper materials to grant exemption, their Lordships examined the nature and character of a public religious and charitable endowment trusts and whether they form a distinct group. It was further held in paragraph 9 that “they form a distinct group which is well organised.” It was held that “it cannot be disputed that public religious and charitable endowments or trust constitute a well recognised distinct group in as much as they not only serve public purposes, but the disbursement of their income is governed by the objects with which they are created and buildings belonging to such public religious and charitable

endowments or trusts clearly fall into a distinct class different from buildings owned by private landlords and as such, their classification to one group done by the State Government while issuing the impugned notification, must be regarded as having been based on an intelligible differentia.” It was observed further in paragraph 15 while justifying the exemption, as follows:

“Apart from this aspect of the matter it is conceivable that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government may have felt that the trustees of such buildings should be able to effect evictions without being required to fulfill other onerous conditions which must be complied with by private landlords when they seek evictions for such purposes. In our view, therefore, the total exemption granted to such buildings under the impugned notification is perfectly justified.”

Judged in the light of the above principles, we are fully satisfied that the exemption granted to the second respondent, a public religious trust, is not violative of Article 14 of the Constitution of India.

18. In fact, similar notifications have been upheld under the same Act, wherein exemptions have been granted to buildings belonging to Cochin Devaswom Board, KHR & W Society and the buildings owned by all churches, mosques of all minority religions and buildings of Diocese, Monastries, Wakfs and Madrassas. The first of those decisions, is by a Division Bench of this court reported in **State of Kerala v. Vijayan** (1978

KLT 342). The buildings therein belonged to Cochin Devaswom Board. Their Lordships held that the act of granting exemption under Section 25(1) of the Act, is a legislative act. Such an act of exemption need not be by an order disclosing reasons. That apart, even if the act of granting exemption is not to be regarded as legislative, there is enough authority that the public interest underlying the exemption, need not be expressly recited in the notification itself. It is enough, if it is made to appear de hors the notification as, for instance, in the affidavit filed on behalf of the Government. Their Lordships also observed that there is only limited scope for judicial review of the reasons which prompted the Government to grant exemption. A learned Single Judge of this court in **Jayakaran v. Kerala Health R & W Society** (1994 (1) KLT 27), after following the dictum laid down in **Kandaswamy Chettiar v. State of Tamil Nadu** (AIR 1985 SC 857) and by the Division Bench, in the above case, held that “grant of exemption in favour of charitable bodies like the petitioner, must be held to be in public interest. Even though no reasons are stated in the notification granting exemption, it is enough if it is stated in the counter affidavit.” The above decision was approved by the Apex Court in **Christ the King Cathedral v. John Ancheril** (2001 (2) KLT 946). Therein, the challenge was against the notification granting exemption in public interest, to the buildings of all churches, mosques, etc., as mentioned already. While

examining the contention that the notification is in violation of Article 14 of the Constitution of India, their Lordships held thus in paragraph 6:

“The law had been stated by this Court to the effect that public religious or charitable endowments or trusts constitute a well recognised group which serves not only public purposes, but disbursement of their income is governed by the objects with which they are created and buildings belonging to such endowments or trusts clearly fall into a class distinct from the buildings owned by private landlords. It is in respect of three areas a regulation would be made under the Act, as has been done in other similar enactments and these areas are (i) with respect to regulation of lease of buildings (residential or non-residential); (ii) control of rent of such buildings and (iii) control of eviction of tenants from such buildings. A public trust, as has been held in *S. Kandaswamy Chettiar* case (*supra*), is not likely to unreasonably act either in the matter of enhancement of rent or eviction of tenants being institutions of religion or charity. On that basis, this Court upheld the validity of the exemption granted under the Tamil Nadu Act in favour of such trust or endowment. In the present case, the contention has been specifically put forth that the appellants fall into that very category which came up for consideration before this Court in *S. Kandawamy Chettiar* case (*supra*). Therefore, no distinction can be made between that class of owners of the buildings in that case and in the present case. We do not understand as to what other material was required by the Court in a matter of this nature if the contention put forth before this court is not that Churches or Mosques, Dioceses, Archdioceses, Monastries, Convents, Wakfs and Madrassas are not religious and charitable in nature.”

Their Lordships further observed that “if the building belonging to such public trust or religious institution is exempt from the Act, the purpose of the trust could be carried out much better is quite clear. It was also held that the question to be considered is only the aspect whether there was due application of mind to the issue of notification in question in terms of the

provisions of the Act and if that aspect was satisfied, no further question arose for consideration. After referring to the Full Bench decision of this court in **Lakshmanan v. Mohammed** (1992 (1) KLT 85(FB)), it was held as follows: (para 9)

“An argument is sought to be raised on the basis of ownership of property that there should not have been a distinction as is being made in the present case. That was the very basis of distinction made in case of statutory bodies like the Housing Board, local authorities which are noticed in the *Jayakaran v. Kerala Health R & W Society* case (supra) or registered Wakfs which was considered in *Lakshmanan v. Mohammed* (1992 (1) KLT 85 (FB)). When such bodies or institutions falling to a distinct class by themselves and exemption granted to them would serve a public purpose, namely, to carry out the objects of the trust or the endowment or religious activity in a broad sense, we do not think that the fine distinction sought to be made by the High Court in this regard is justified.”

19. We may notice herein another argument raised by the learned counsel for the petitioner that there is a specific provision under Section 11 (7) of the Act with respect to buildings owned by religious, charitable, educational or other public institution and therefore the normal rule is that they should also fall in line with the requirements of the Act and the tenants of such bodies should not be discriminated in the matter of protection under various provisions of the Act. Section 11(7) of the Act reads as follows:

“11(7):-- Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building.”

It only mentions that when the landlord of a building is such bodies named

in the section, eviction can be ordered if the building is needed for the purposes of the institution. That is not a ground to contend for the position that exemption cannot be resorted to, as Section 25 of the Act starts with the opening words “notwithstanding anything contained in this Act”. The same will clearly override other provisions of the Act. It is not a case where no guidelines are available. The Government is expected to act in public interest. In the light of the principles stated in the various authorities mentioned above, it cannot be said that no public interest is involved while granting exemption to the building owned by the second respondent which is a public religious trust. It is clear from the files produced and from the counter affidavit of the Government that all material aspects have been considered by the Government before granting exemption. Reports were called for from the Land Revenue Commissioner and the District Collector, who in turn, has made enquiries through the Tahsildar. The Government was having before it the notifications already issued exempting the buildings owned by churches, mosques of all minority religions and buildings of Waks, Madrassas, etc. It is clear that the Government have acted well within its jurisdiction. That too, after considering relevant materials including the working of the second respondent which was found genuine by the revenue authorities. Therefore, it is not a case where there was any non application of mind, as vehemently contended by the learned

counsel for the petitioners.

20. The other aspect pointed out by the learned counsel for the petitioners is that the vested rights of the tenant are taken away by the impugned notification. This contention is also not correct in the light of the decision of the Apex Court reported in **Parippath Chandrasekhara Rao & Sons v. Alapathi Jalaiah** ((1995) 3 SCC 709). The difference between rights vesting in the landlord and the protective rights conferred on the tenants under the rent control legislation was examined in the light of a similar challenge to a notification granting exemption. It was observed in paragraphs 12 and 13 by the Apex Court that the theory of vested right is not available to the tenant, as the same is lost the moment the protection was taken away. Their Lordships held as follows:

“12. According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence, while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant, therefore, the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal

relations of the landlord and tenant come into operation. Hence, the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant. It is for this reason that the analogy sought to be drawn by Shri Subbarao between the landlord's and the tenant's rights relying upon the decision of this court in *Atma Ram Mittal* is misplaced. In that case the landlord's normal right to evict the tenant from the premises was not interfered with for the first ten years of the construction of the premises by an exemption specifically incorporated in the protective rent legislation in question. The normal right was obviously the vested right under the general law and once accrued it continued to operate. The protection given to the tenant by the rent legislation came into operation after the expiry of the period of ten years. Hence, notwithstanding the coming into operation of the protection and in the absence of the provisions to the contrary, the proceedings already commenced on the basis of the vested right could not be defeated by mere passage of time consumed by the said proceedings. It is for this reason that the Court there held that the right which had accrued to the landlord being a vested right could not be denied to him by the efflux of time.

13. That is not the situation in the present case where the tenant who undoubtedly had the rights and remedies under the Act to claim reliefs against the landlord, lost the same the moment the protection was taken away, the rights and remedies being not vested ones.”

We notice that the said principles have been followed by a learned Single Judge in AIR 1999 Kerala 425 while considering a similar argument. Even though learned counsel for the petitioner placed heavy reliance on the decision of a learned Single Judge in **Moidunni v. State of Kerala** (1991 (2) KLT 96), whereby exemption granted to a building owned by one charitable institution, was quashed by this court, a reading of the decision shows that this court interfered with the notification after finding that the Government had issued the notification relying on certain incorrect facts

placed before it and without knowing some material facts relating to the building in question. It was also held by the learned Single Judge in that decision that the Government formed its opinion on incomplete and incorrect report of an officer, which cannot be justified. The circumstances available herein are not similar, as already pointed out by us, as the Government have acted only on relevant materials and the decision is not tainted by non application of mind.

21. Then the other argument that the amount spent towards charitable purposes is meagre, has also to be examined. While considering this question, it is relevant to notice that exemption has been granted to the second respondent not on the basis of its charitable nature alone, but after considering that it is a public religious trust. The activities which are charitable, have also been noticed by the Government while granting exemption. Therefore, the argument of the learned counsel that the basis of grant of exemption is incorrect, does not appear to be sound. Even though Ext.P9 was quoted in support to show that the amount spent towards charity is less compared to the large income, as rightly pointed out by learned Senior Counsel for the second respondent, an over all assessment of the nature of objects and activities made by the religious trust alone, should be considered by this court and the assessment of the charitable activities cannot be confined to the volume with reference to two or three years as

attempted to by the petitioner herein. The contention therefore raised by the petitioners does not survive. Once it is held that the second respondent is a public religious trust established for religious and charitable purpose, going by the principles stated by the Apex Court in **S. Kandaswamy Chettiar v. State of Tamil Nadu** (AIR 1985 SC 257) and **Christ the King Cathedral v. John Ancheril** (2001 (2) KLT 946) that it is an intelligible differentia all consequences will follow to justify the issuance of the notification. The question is only whether there was due application of mind for issuing the notification in question in terms of the provisions of the Act. We are satisfied that the said test has been completely satisfied in this case and the notification cannot be invalidated for non application of mind and for non consideration of the relevant materials. Therefore, the decision making process is not unreasonable or irrational and it clearly satisfies the Wednesbury principles also.

For all these grounds, we hold that Ext.P6 notification is valid and the writ petition is consequently dismissed. There will be no order as to costs.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/